

November 18, 2008

At a special called meeting of the Board of Supervisors of Prince Edward County, held at the Court House, thereof, on Tuesday the 18th day of November, 2008; at 7:00 p.m., there were present:

William G. Fore, Jr.

Sally W. Gilfillan

Robert M. Jones

Charles W. McKay

James C. Moore

Howard F. Simpson

Lacy B. Ward

Mattie P. Wiley

Also present: Wade Bartlett, County Administrator; Sarah Puckett, Assistant County Administrator; and James Ennis, County Attorney.

Chairman Fore called the meeting to order, stating that its purpose was a work session to prioritize the proposed capital projects, and to discuss the draft water and sewer agreement between the Town of Farmville and the County. He then asked the Board members to rank the proposed capital projects in order, with one being highest priority.

Supervisor Ward expressed his support of the library project.

Chairman Fore said the Board's priority ranking of the projects will be forwarded on to Davenport and Associates to determine a more accurate report of what the County can afford. Mr. Bartlett said Davenport had called for QZABs in 2006 and two bidders responded; last year only one bidder responded. He said QZABs are not being done because the economic environment. He added the money can be borrowed in other ways, just not in the form of QZABs.

The tally of the priority rank is as follows:

<u>Project & Estimated Cost:</u>	<u>Tally</u>	<u>Rank</u>
QZAB/School Construction/Renovation Projects (\$1.1 million)	37	5
Industrial Park Site Development (\$1.3 million)	35	4
Water & Sewer Agreement with Town (\$2.5 million)	11	1

New Library (\$2.8 - \$3.1 million)	17	2
Sandy River Reservoir Intake (\$4.0 million)	27	3
Water Plant & Distribution System (\$15 -25 million)	41	6

Supervisor Gilfillan suggested the Board consider supporting the development of agriculture as economic growth in the County with the current economic instability.

Supervisor Ward asked if the budget included any of these projects. Mr. Bartlett, County Administrator, said there was no money in the current budget; Supervisor Jones said some of the money in the Economic Development Fund could be used. Mr. Bartlett said Davenport is assessing the County's overall financial health to show the impact of each project and the ability of the County to pay each one back. He added that "afford" is a relative term as the Board decides what it can and cannot afford; the choice to keep the tax level or to raise it is a choice the Board would have to make.

Supervisor Jones said other participants could enter into the water plant project, and that must be a consideration. Further discussion on the water plant project and the intake project followed.

Supervisor Gilfillan stressed the work on the library project over the years has been considerable and asked that the bid not be allowed to expire. Supervisor Ward said the library project should go forward, and said the discussion on the water and sewer plant and the intake project is confusing the priority. He then asked if the agreement with the Town of Farmville is signed, will the County still proceed with the development of a water treatment plant. Chairman Fore said the priorities were being determined.

Discussion followed on the feasibility of the water treatment plant and the work being done by Davenport. Questions were raised regarding a customer base for a water treatment plant. Supervisor Jones said several localities have shown interest in obtaining water service, which would provide a customer base.

Supervisor Simpson expressed his concern regarding the reports from Davenport and the difference between the ones they submitted four months ago which stated the County could afford all of the projects. Mr. Bartlett said those reports were working documents and it did not state the County could afford to do all of the projects without an impact; he said all of those items would require either revenues, grants, or some other funding from the County's revenue structure at that time. Mr. Bartlett added the

report stated the sewer plant would not be afforded under the revenue and the reduced debt structure that the County had at that time.

Supervisor Ward said the water line from Hampden Sydney to The Manor and the purchase of the wells are not listed. Mr. Bartlett said The Manor has not responded to his letter. Supervisor Jones said the only reason the County considered the purchase of the wells was due to the moratorium placed at that time by the Town of Farmville. He said if this agreement is passed with the Town, those wells would not be necessary.

Chairman Fore then turned the discussion to the draft water and sewer agreement.

Supervisor Ward asked if the County owes money to the Town of Farmville or the CDA, as the agreement states “The County agrees to pay Two Million and Five Hundred Dollars (\$2,500,000.00) to the Town for the system to be conveyed, payable in two installments...” He said the draft contract states “a portion of its water supply and wastewater system (‘the system to be conveyed’) located in the County and described as beginning at the “METERING POINT” as shown on the Nash drawing and continuing in a southeasterly direction along the existing water supply and waste water system treatment lines and service system until the end thereof.” Mrs. Sarah Puckett, Assistant County Administrator, said that description refers to existing lines. Supervisor Ward then asked if the lines were constructed by the Town for the CDA, and if any government funding was involved. Mrs. Puckett said the project had not been administered by the County and all sources of funding were unknown. Mr. Bartlett said in a document received from the Town of Farmville, the Town did provide some funding and from in-kind labor for the project. He said \$400,000 +/- and another \$110,000 connected to a Dominion power line, Tobacco Commission funds were received. He said the document showed that of the \$1 million from the Tobacco Commission, more than half of that was used to build the road. He added the price included the lines the Town installed on their own, as well as the pump station. Supervisor Jones said the price would include the right to purchase water and sewer service from the Town.

Discussion followed on the Settlement and General Release Agreement. Supervisor Ward expressed his concern that the CDA would be released from their obligation to the Town.

Mr. Ennis said the Town of Farmville proposed the condition in the Settlement and General Release Agreement would include a mutual release of liability. The Town made the Water/Sewer

Agreement contingent upon a mutual release being executed, and the first document references that in Section 2. The contract of January 11, 2000 has three named parties – the Town of Farmville, Prince Edward County, and the CDA. Mr. Ennis said, “Also in the law there exists what is known as third party beneficiaries of a contract, and this mutual release is attempting to cover all of the known potential third-party beneficiaries who may come in and allege that one party or the other has breached the agreement of January 11, 2000, and has therefore suffered damage. It simply attempts to clean up all of the potential plaintiffs that might come forward with a claim by having all of them enter into an agreement where they release each other from any liability under the Agreement of 2000. The language is plain; the language has been reviewed by the Town Attorney. I have to assume they understand what the word ‘debt’ means when they read it. They understand who the parties are that are being required to sign this document, to put any questions about the contract of January 11, 2000 to rest forever, that it will not be the subject of any future dispute because if all of the parties and the potential third-party beneficiaries have entered into this release, and specifically declared that document to be null and void as to any obligations that were created, there will exist no potential for a future lawsuit. The Town [of Farmville] would not have required that contingency in this agreement if they did not have some legitimate concern about a lawsuit. It was their requirement. They put that language in there; they drafted this document first and sent it over to be reviewed. I have reviewed it; I have revised it. This is about the ninth draft of this document. But at no time has that language been changed from their original proposal because they are firm on that point. I don’t know if they perceive that they are forgiving some debt that somebody owes, but it’s been reviewed, the language is acceptable to the Town Attorney that is contained in it. And I don’t know whether they think some portion of the \$2.5 million is going to be applied to some debt that they claim the CDA owes, or not. I only know that the price was negotiated and that they set that as a condition of executing this document. I drafted the release document and that too has been reviewed by the Town Attorney and they didn’t have any problem with the language.”

Supervisor Ward said his concern is the process in which certain past events occurred, and said he tends to look deeper due to issues involving the CDA and The Manor.

Supervisor Simpson said certain changes needed to be made to the draft agreement, including the word “thousand” omitted from Page 2, to read “The County agrees to pay Two Million and Five Hundred

Thousand Dollars (\$2,500,000.00) to the Town for the system to be conveyed, payable in two installments, without interest...”; and Section 3. currently states “The County shall construct, ...” and should state “The Town shall construct, maintain, repair and operate at its sole expense such water supply and wastewater system as is necessary to provide water and wastewater service ...”; and to allow County employees the ability to inspect the meter to insure correct readings.

After discussion on the changes to be made, Supervisor Simpson made a motion to approve the amended Water/Sewer Agreement with the Town of Farmville. The motion carried:

Aye:	William G. Fore, Jr. Sally W. Gilfillan Robert M. Jones Charles W. McKay James C. Moore Howard F. Simpson Mattie P. Wiley	Nay:	Lacy B. Ward
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Supervisor Moore made a motion to authorize the Chairman of the Board to execute the final Water/Sewer Agreement and the Mutual Release. The motion carried:

Aye:	William G. Fore, Jr. Sally W. Gilfillan Robert M. Jones Charles W. McKay James C. Moore Howard F. Simpson Mattie P. Wiley	Nay:	Lacy B. Ward
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Supervisor Ward suggested requesting the grant writing services of the Commonwealth Regional Council. He said the County contributes approximately \$22,000 in funding and in their current annual report, saw nothing done for Prince Edward County.

On motion of Supervisor Moore and adopted by the following vote:

Aye:	William G. Fore, Jr. Sally W. Gilfillan Robert M. Jones Charles W. McKay James C. Moore Howard F. Simpson Lacy B. Ward Mattie P. Wiley	Nay:	None
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the meeting was recessed at 7:59 p.m. until Wednesday, November 19, 2008 at 12:30 p.m. in the Town Council Chambers.